

November 21, 2017

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for the violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Connecticut seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is twofold. First, The BCON Company and BC of Derby, Inc. dba Beard Sand and Gravel and Beard Concrete Co. (hereafter “Beard”) are discharging stormwater directly associated with sand and gravel (SIC Major Group 14) and concrete (SIC Major Group 32) at 1 Oronoque Road, Milford CT 06461² (the “Facility”), to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Beard has not sought, obtained coverage under, or

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Housatonic watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF’s membership includes people who live in or near the Housatonic and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

² This is the approximate address of the Facility based on GoogleMaps. The facility is located north of Caswell Cove Marina and directly east of Fowler Island.

complied with the conditions of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)³ issued by the Connecticut Department of Energy and Environmental Protection (“DEEP”) in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1), 122.26(e)(1). In addition, the Facility’s process water discharges associated with its mine dewatering discharges cannot be covered under the General Permit but must be covered under an individual NPDES permit, or eliminated.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into Long Island Sound and other receiving waters. The consensus among agencies and water quality specialists is that stormwater⁴ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEEP has designated more than 1000 river miles and 6000 acres of larger waterbodies in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁵ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as the primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility into the Housatonic River and ultimately the Long Island Sound. The Housatonic River is a waterway within the Housatonic watershed. The waterbody section immediately adjacent to the Facility (Waterbody ID: CT-C1_020-SB) and the next downstream waterbody (Waterbody ID: CT-C1_019-SB) are classified as class SB waterbodies.

³ CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION, GENERAL PERMIT FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY (October 1, 2016), http://www.ct.gov/dep/lib/dep/Permits_and_Licenses/Water_Discharge_General_Permits/storm_indust_gp_100111.pdf [hereinafter GENERAL PERMIT]. Connecticut’s General Permit for the Discharge of Stormwater Associated with Industrial Activity was first issued on October 1, 1992. It has been reissued and/or modified several times since then. The current General Permit became effective on October 1, 2016, and will expire on September 30, 2018.

⁴ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

⁵ See U.S. ENVTL. PROTECTION AGENCY, CONNECTICUT WATER QUALITY ASSESSMENT REPORT (2012), https://iaspub.epa.gov/waters10/attains_state.control?p_state=CT&p_cycle=2012.

Under the Water Quality Standards for the State of Connecticut, Class SB waterbodies are designated for the following uses: “commercial shellfish harvesting, fish consumption, habitat for marine fish, other aquatic life and wildlife, and recreation.”⁶ The Connecticut Water Quality Standards establish minimum parameters to support the designated uses, including but not limited to aesthetics, dissolved oxygen, sludge, oil and grease, scum, color, suspended and settleable solids, silt or sand deposits, turbidity, bacteria, taste and odor, pH, temperature, chemicals, nutrients, sodium, and biological condition.⁷

DEEP has assessed the waterbody immediately next to the Facility as good based on available data (Waterbody ID: CT-C1_020-SB).⁸ However, this waterbody has not yet been assessed for commercial shellfish harvesting, habitat for marine fish, other aquatic life and wildlife, or recreation.⁹

DEEP has designated the next waterbody downstream from the Facility (Waterbody ID: CT-C1_019-SB) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d) for failure to support its designated uses for commercial shellfish harvest and as a habitat for marine fish, other aquatic life and wildlife.¹⁰ The start of Waterbody ID: CT-C1_019-SB is less than one and a half miles from the Facility. This waterbody segment has not yet been assessed for recreation. The causes of impairment are copper,¹¹ zinc,¹² fecal coliform, dioxin, and polychlorinated biphenyls (PCBS).¹³ Probable sources contributing to the impairments are airports, landfills, marina/boating sanitary on-vessel discharges, municipal point source discharges, residential districts, waterfowl, industrial point source discharge, industrial/commercial site stormwater discharge, unspecified urban stormwater, and unspecified nonpoint sources.¹⁴

⁶ See STATE OF CONNECTICUT, REGULATION OF CONNECTICUT WATER QUALITY STANDARDS 18 (2015), <https://eregulations.ct.gov/eRegsPortal/Browse/getDocument?guid={C0A3E155-0100-C1CF-85C3-D3C28F298640}>.

⁷ *Id.* at 30-37.–52.

⁸ See EPA WATERBODY QUALITY ASSESSMENT REPORT (WATERBODY ID: CT-C1_020-SB) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=CT-C1_020-SB&p_cycle=2014&p_state=CT&p_report_type=

⁹ *Id.*

¹⁰ See EPA WATERBODY QUALITY ASSESSMENT REPORT (WATERBODY ID: CT-C1_019-SB) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=CT-C1_019-SB&p_cycle=2014&p_state=CT&p_report_type=

¹¹ In addition to multiple other parameters, the General Permit requires facilities to monitor for Total Copper. Beard has not monitored for Copper. See GENERAL PERMIT, *supra* note 3 at § (e)(1)(A)(ii).

¹² In addition to multiple other parameters, the General Permit requires facilities to monitor for Total Zinc. Beard has not monitored for Zinc. See GENERAL PERMIT, *supra* note 3 at § (e)(1)(A)(ii).

¹³ *Supra*, note 10.

¹⁴ *Supra*, note 10.

Additionally, Beard is located roughly half a mile upstream from the Charles E. Wheeler Wildlife Management Area (hereafter Wheeler WMA). Wheeler WMA is an important nesting site for the state threatened Least Tern and federally threatened Piping Plover.¹⁵ Stormwater discharge is an activity named by the U.S. Fish and Wildlife Service as affecting critical habitat for the Piping Plover.¹⁶

Long Island Sound ("LIS") is the ultimate receiving water for discharges from the Facility. DEEP has designated the Long Island Sound for uses including shellfishing and recreation. But, the LIS consistently fails to sustain these uses and fails to meet state water quality standards. Thus, DEEP has designated LIS as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d).¹⁷ Illegal stormwater discharges from this Facility contribute to the Sound's impaired status.

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.¹⁸ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater flow.¹⁹ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.²⁰

In order to discharge stormwater lawfully, Beard is required to apply for coverage under a Clean Water Act National Pollutant Discharge Elimination System discharge permit such as the General Permit issued by DEEP. Beard has failed to obtain a General Permit for the Discharge of Stormwater Associated with Industrial Activity issued by DEEP or any other valid authorization at any time. Therefore, Beard is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The BCON Company and BC of Derby, Inc. and the Facility owner(s) and Operator(s) are the persons, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Beard has operated the Facility since at least 1950 and currently

¹⁵ See DEEP, *WATCHABLE WILDLIFE-WHEELER WILDLIFE MANAGEMENT AREA*, 34.1, CONNECTICUT WILDLIFE, p. 17, (2014)

http://www.ct.gov/deep/lib/deep/wildlife/pdf_files/outreach/connecticut_wildlife_magazine/cwjf14.pdf

¹⁶ See U.S. FISH AND WILDLIFE PIPING PLOVER CRITICAL HABITAT QUESTIONS AND ANSWERS, <https://www.fws.gov/plover/q&a.html>

¹⁷ See LONG ISLAND SOUND TMDL REPORT (2000), <http://longislandsoundstudy.net/wp-content/uploads/2010/03/Tmdl.pdf>

¹⁸ See 40 C.F.R. § 122.26(b)(13).

¹⁹ See 40 C.F.R. § 122.26(b)(14).

²⁰ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

advertises as the operator of the Facility.²¹ Beard and its agents and directors, including but not limited to James R. Beard, president, and directors, have operational control over the day-to-day industrial activities at this Facility. Therefore, the Facility owner(s) and operator(s) are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the construction sand and gravel and concrete Facility located at 1 Oronoque Road, Milford CT 06461.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Beard has, and continues to, engage in “industrial activities,” and its operations fall under SIC Code Major Groups 14 and 32, within the meaning of 40 C.F.R. §§ 122.26(b)(14).²² Because the Facility has primary SIC Codes of 1442 and 32 and discharges stormwater associated with industrial activity, Beard is required to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual NPDES permit. In addition, Beard is required to obtain individual NPDES permit coverage for process wastewater discharges that may result from activities such as mine dewatering. Beard has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: storing, moving, and processing sand and gravel (exposed aggregate), concrete, and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facility thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Sand and gravel (exposed aggregate), concrete, and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the sand and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facility’s operations. The polluted runoff is then conveyed off-site into waters of the United States.

²¹ See CONNECTICUT SEC’Y OF THE STATE BUSINESS INQUIRY: THE BCON COMPANY, [HTTPS://WWW.CONCORD-SOTS.CT.GOV/CONCORD/ONLINE?SN=PUBLICINQUIRY&EID=9740](https://www.concord-sots.ct.gov/concord/online?SN=PUBLICINQUIRY&EID=9740) and CONNECTICUT SEC’Y OF THE STATE BUSINESS INQUIRY: BC OF DERBY, INC., [HTTPS://WWW.CONCORD-SOTS.CT.GOV/CONCORD/ONLINE?SN=PUBLICINQUIRY&EID=9740](https://www.concord-sots.ct.gov/concord/online?SN=PUBLICINQUIRY&EID=9740)

²² See GENERAL PERMIT, *supra* note 3, at § 5(f)(b)(specifying that activities covered include: SIC Major Group 14 that mine sand, gravel, stone, clay and other non-metallic minerals as well as those facilities that cut and shape stone products classified as SIC Code 3281).

In addition, to the extent that Beard uses water in its industrial processes, including but not limited to washing sand, rock and gravel and spraying water on rock crushing and sorting machinery, that water becomes “process wastewater” (also referred to as “process water”) as defined in 40 C.F.R. § 122.2.²³ Discharges of process wastewater are not covered under Connecticut’s General Permit for the Discharge of Stormwater Associated with Industrial Activity. Instead, discharges of process wastewater must be covered under an individual NPDES permit. CLF intends to pursue claims related to Beard’s unpermitted discharges of process water to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

a. Beard is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.²⁴ Beard’s industrial activity at its Facility has caused and continues to cause a “discharge of pollutants” within the meaning of 33 U.S.C. § 1362(12) and “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14), from the Facility on at least each and every day that there has been a measurable rain event of above 0.1 inches.²⁵ There have been many such storm events since 2012.

The Facility is generating pollutants from and through at least the following point sources: The Facility is generating pollutants from and through at least the following point sources: the sand, gravel, and various other material piles that are open to the elements; the machines and equipment left outdoors, and the vehicles driving on and off the Facility, while additionally conveying pollutants through site grading, surface water channels, subsurface hydrological connections, detention ponds, culverts, and other conveyances to the Housatonic River and other waters of the United States. The Housatonic River flows into Long Island Sound, which flows into the Atlantic Ocean, all of which are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore are also “navigable waters,” as defined in Section 502(7) of the CWA, 33

²³ Defining “Process wastewater” as “any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.”

²⁴ See 33 U.S.C. § 1311(a).

²⁵ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Beard is Violating the Clean Water Act by Failing to Obtain Coverage Under and Failing to Comply with the Requirements of the General Permit.

Beard is an industrial discharger with primary SIC Codes of 1442 and 32, which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Beard is obligated to apply for coverage under the General Permit or an individual NPDES permit for its discharge of polluted stormwater and must comply at all times with the conditions of its permit. By failing to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual permit, Beard is violating CWA Sections 301(a), 402(a), 402(p), 33 U.S.C. §§ 1311(a), 1342(a), 1342(p), 40 C.F.R. § 122.26(c)(1), and 40 C.F.R. § 122.26(e)(1).²⁶ The primary General Permit requirements that the Beard has failed and continues to fail to meet are detailed below.

1) Beard must submit a registration form to DEEP to be covered under the General Permit.

To be eligible to discharge under the General Permit, Beard must file a registration form with DEEP.²⁷ To register, Beard is required, among other things, to include a description of all stormwater discharges, including descriptions of: the conveyances, outfalls or channelized flows that run off the site, the property and amount of impervious surfaces in square feet or acres, the immediate surface water body or wetland to which the stormwater conveyance, outfall and/or runoff discharges, and the name of the watershed and nearest waterbody to which the site discharges and its Water Quality Classification.²⁸ Beard has failed to prepare and file a registration form.²⁹

²⁶ Sections 301(a), 402(a), and 402(p) make it unlawful for Beard to discharge stormwater associated with industrial activity without obtaining and complying with the conditions of a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and 122.26(e)(1) require Beard to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

²⁷ See GENERAL PERMIT, *supra* note 3, at § 4 (specifying that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a registration form to DEEP is required in order to obtain coverage under the General Permit). CLF does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage. For example, if the Facility is discharging process wastewater, such as wash water, or has any other non-stormwater discharge containing pollutants which is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also constitutes as a violation of 33 U.S.C. §§ 1311(a), 1342(p).

²⁸ See GENERAL PERMIT, *supra* note 3, at § 4(c)(2)(F).

²⁹ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database, and DEEP's database, reveals that no registration form has been submitted for the Facility. See U.S. ENVTL.

2) Beard must develop and implement a Stormwater Pollution Prevention Plan.

Beard must also prepare, make available, and implement a Stormwater Pollution Prevention Plan (“SWPPP”) in accordance with schedules established in the General Permit.³⁰ Among other things, the SWPPP must include: a facility description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures, and schedules and procedures for implementation of control measures, monitoring and inspections, as well as certain additional requirements specific to sand and gravel facilities.³¹ Beard has failed to develop, make available, and implement a compliant SWPPP.³²

3) Beard must implement control measures and Best Management Practices.

Facilities that become authorized to discharge stormwater under the General Permit must operate in accordance with mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.³³ These BMPs include, but are not limited to: minimizing exposure of stormwater to certain materials, for example by means of a permanent roof or cover;³⁴ managing stormwater runoff, for example through implementing measures such as diverting uncontaminated run-on to avoid areas that may contribute to pollutants, or through collection and reuse or treatment

PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, <https://echo.epa.gov/> (last visited November 21, 2017) and C.T. DEPT. OF ENERGY & ENVTL. PROTECTION, GENERAL PERMIT REGISTRATION FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY http://www.depdata.ct.gov/permit/Industrial_Stormwater_Reg_Report.pdf.

³⁰ See GENERAL PERMIT, *supra* note 3, at § 5(c).

³¹ See GENERAL PERMIT, *supra* note 3, at § 5(f)(2)(Sector B).

³² See *supra* note 29. A thorough search of the EPA’s and DEEP’s records reveals that as of the date of this Notice, no SWPPP has been prepared or submitted for the Facility as part of the Registration for permit coverage. On information and belief, no SWPPP exists.

³³ See GENERAL PERMIT, *supra* note 3, at §§ 5(b), 5(f) (detailing both general BMPs and sector-specific BMPs).

³⁴ See GENERAL PERMIT, *supra* note 3, at § 5(b)(5); see also GENERAL PERMIT, *supra* note 3, at § 5(c)(2)(D)(ii) (requiring an inventory of exposed materials).

measures;³⁵ preventative maintenance and testing;³⁶ spill prevention and response procedures;³⁷ sediment and erosion control;³⁸ dust suppression;³⁹ and run-on diversion.⁴⁰

4) Beard must conduct routine site inspections.

Facilities that become authorized to discharge under the General Permit must conduct routine comprehensive inspections of areas where industrial materials or activities are exposed to precipitation and must ensure that all stormwater control measures comply with the SWPPP.⁴¹ There are two different kinds of inspections required by the General Permit. At least twice a year, qualified personnel must visually inspect material handling areas and other potential sources of pollution, and prepare a report summarizing the details and results of the inspection.⁴² In addition, Beard must also ensure that qualified personnel conduct monthly visual inspections of equipment and specific sensitive areas of the site.⁴³ Moreover, at least quarterly, the Facility must also inspect stormwater management devices (e.g., oil and water separators, sediment traps or chambers, pressure wash collection systems), in addition to inspecting facility equipment and systems to prevent breakdowns or failures resulting in discharges of pollutants to surface waters.⁴⁴ The schedule of these inspections as well as the records and reports resulting from these inspections must be included in the SWPPP.⁴⁵ On information and belief, Beard has failed to conduct the required routine inspections.

5) Beard must comply with monitoring requirements.

Facilities authorized under the General Permit must collect and analyze stormwater samples, document monitoring activities, and submit reports to DEEP.⁴⁶ The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEEP may require additional individualized monitoring as well.⁴⁷ In particular, because the Housatonic River and downstream receiving waters are “impaired waters” under 33 U.S.C. § 1313(d), Beard must monitor for all pollutants for which the Housatonic River is impaired.⁴⁸

³⁵ See GENERAL PERMIT, *supra* note 3, at § 5(b)(7).

³⁶ *Id.* at § 5(b)(8).

³⁷ *Id.* at § 5(b)(9).

³⁸ See GENERAL PERMIT, *supra* note 3, at § 5(f)(2)(B)(i).

³⁹ See GENERAL PERMIT, *supra* note 3, at § 5(f)(2)(B)(ii).

⁴⁰ See GENERAL PERMIT, *supra* note 3, at § 5(f)(2)(B)(iii).

⁴¹ See GENERAL PERMIT, *supra* note 3, at § 5(d).

⁴² *Id.* at § 5(d)(1).

⁴³ *Id.* at § 5(d)(2).

⁴⁴ *Id.*

⁴⁵ See GENERAL PERMIT, *supra* note 3, at § 5(d).

⁴⁶ *Id.* at §§ 5(e), 5(h).

⁴⁷ See GENERAL PERMIT, *supra* note 3, at § 5(e).

⁴⁸ See GENERAL PERMIT, *supra* note 3, at § 5(e)(1)(D).

Samples must be collected from any discharge resulting from a storm event that occurs at least 72 hours after any previous storm event generating a stormwater discharge, and must be taken during the same storm event, if feasible.⁴⁹ These samples must be tested for pollution according to the methods prescribed in 40 C.F.R. pt. 136, unless otherwise specified in the General Permit.⁵⁰ On information and belief, Beard has failed to conduct the required monitoring and testing under the General Permit and has failed to submit the required monitoring reports to DEEP.

6) Beard must comply with reporting and record keeping requirements.

Beard must maintain and submit to DEEP any and all required monitoring data.⁵¹ Required monitoring data includes: stormwater monitoring reports (SMR) identifying all discharges;⁵² inspection reports, summarizing the scope and description of the inspections, as well as major observations, actions taken and updates made to the SWPPP;⁵³ semiannual benchmark monitoring reports;⁵⁴ an Exceedance Report that must be submitted to DEEP if any of the follow-up monitoring shows any exceedance of a numeric effluent limit;⁵⁵ and any other required reports under the General Permit.

For each measurement or sample taken pursuant to the requirements of the General Permit, Beard must maintain records that include: the place, date, and time of sampling and the time the discharge started; the person(s) collecting the samples; the dates and times the analyses were initiated; the person(s) or laboratory that performed the analyses; the analytical techniques or methods used; and the results of all analyses.⁵⁶ All records and information resulting from the monitoring activities required by the General Permit, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of five years following the expiration of the General Permit.⁵⁷ Moreover, Beard has a duty to correct and report any violations immediately upon learning of such a violation(s).⁵⁸ On information and belief, Beard has failed to maintain the required records and failed to submit all required monitoring data and reports.

⁴⁹ *Id.* at § 5(e)(2)(A).

⁵⁰ *See* GENERAL PERMIT, *supra* note 3, at § 5(e)(2)(D)(i); *see also* 40 C.F.R. § 136. This does not include acute toxicity biomonitoring tests, as stated in the GENERAL PERMIT § 5(e)(2)(D)(ii).

⁵¹ *Id.* at § 5(h)(3).

⁵² *Id.* at § 5(e)(2)(A).

⁵³ *See* GENERAL PERMIT, *supra* note 3, at § 5(d)(1)(B).

⁵⁴ *Id.* at § 5(e)(1)(B)(v).

⁵⁵ *Id.* at § 5(e)(1)(F)(ii).

⁵⁶ *Id.* at § 5(h)(1)(A).

⁵⁷ *Id.* at § 5(h)(2).

⁵⁸ *Id.* at § 6(b).

7) Beard must comply with additional requirements located in Section 5(f)(2)(Sector B) of the General Permit.

As noted above, the General Permit contains various requirements that are specific to Non-metallic Mines and Quarries. These requirements—many of which are listed above—are detailed in Section 5(b)(2)(Sector B) of the General Permit. On information and belief, Beard has failed to comply with the additional requirements of these Sections of the General Permit.⁵⁹

In addition, Beard must assure that any activities authorized under the General Permit are conducted in accordance with the following conditions under General Permit Section 5(a):

- General Permit Section 5(a)(3): There shall be no distinctly visible floating scum, oil or other matter contained in the stormwater discharge. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharge.
- General Permit Section 5(a)(4): The stormwater discharge shall not result in pollution due to acute or chronic toxicity to aquatic and marine life, impair the biological integrity of aquatic or marine ecosystems, or result in an unacceptable risk to human health.
- General Permit Section 5(a)(5): The stormwater discharge shall not cause or contribute to an exceedance of the applicable Water Quality Standards in the receiving water.
- General Permit Section 5(a)(6): Any new stormwater discharge to high quality waters (as defined in the Water Quality Standards) shall be discharged in accordance with the Connecticut Anti-Degradation Implementation Policy in the Water Quality Standards manual.

On information and belief, Beard has failed to comply with these requirements.

Moreover, in Section 5(i) of the General Permit, DEEP incorporated by reference certain state regulations that set forth the duties of lawful NPDES permit holders. On information and belief, Beard is also violating these obligations. These duties include:

- complying with all terms and conditions of a NPDES permit;
- properly operating and maintaining facilities and systems for wastewater collection, storage, treatment and control;
- using approved methods for disposal of any screenings, sludges, chemicals and oils and any solid or liquid wastes resulting from wastewater treatment;
- maintaining practices, procedures and facilities designed to prevent, minimize and control spills, leaks or such other unplanned releases of all toxic or hazardous substances and any

⁵⁹ See GENERAL PERMIT, *supra* note 3, at § 5(f)(2)(Sector B)(A–C)(detailing Additional Requirements for Authorization, Additional Control Measures, and Additional Plan Requirements).

other substances as the commissioner deems necessary to prevent pollution of the waters of the state; and

- taking all reasonable steps to minimize or prevent any discharge in violation of the permit or any discharge which has a reasonable likelihood of adversely affecting human health or the environment.⁶⁰

In sum, Beard's discharge of stormwater associated with industrial activities without a permit and Beard's failure to apply for, obtain coverage under, and comply with the above-listed conditions of the General Permit—or an individual NPDES permit—constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(p).

DATES OF VIOLATION

Each day on which Beard operates its Facility without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Beard has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since the commencement of Beard's operation at the Facility (or Oct. 1, 1992, whichever is later) on which there has been a measurable precipitation event. Each day on which Beard operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at 2012 on which Beard has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the General Permit for the Discharge of Stormwater Associated with Industrial Activity issued by DEEP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A). These days of violation have continued consecutively since October 1, 1992, when Connecticut's first general permit for the discharge of stormwater associated with industrial activity came into effect, or the commencement of Beard's operation at the Facility, whichever is later.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

⁶⁰ See Regulations of Connecticut State Agencies §§ 22a-430-3 (e)–(h), (p), which are incorporated into the General Permit in Section 5(i)(1).

RELIEF REQUESTED

Beard is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Beard to a penalty of up to \$37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015; up to \$51,570 per day per violation for all CWA violations occurring after November 2, 2015 and assessed on or after August 1, 2016 but before January 15, 2017; and up to \$52,414 per day per violation for all Clean Water Act violations occurring after November 2, 2015 and assessed on or after January 15, 2017, pursuant to § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4.⁶¹ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Beard to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

⁶¹ See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.



Sincerely,

A handwritten signature in blue ink, appearing to read "Zachary K. Griefen", is written over a horizontal line.

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